

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>v.</b>	)	<b>CASE NO. 1:04CR-249-CAP</b>
	)	
<b>GREGORY C. KAPORDELIS,</b>	)	
	)	
<b>Defendant.</b>	)	

**MOTION TO COMPEL THE GOVERNMENT  
TO MAKE EVIDENCE AVAILABLE TO THE  
DEFENDANT TO REVIEW PRIOR TO SENTENCING**

The government has announced its intention to move for an upward departure based on the number of child pornography pictures contained on all the computers seized from his house and located elsewhere. The defendant contests the factual foundation for this motion. In fact, the defendant contends that only a fraction of the 10,000 alleged child pornographic images are, as a matter of law, child pornography.

While the defendant was given access to the computers prior to trial on numerous occasions, there was never the need to methodically review all the pictures to determine the number that would qualify as child pornography. Now, however, in light of the government's motion, this task is essential in order for the court to consider not just the legal basis for the

departure (which is flawed), but also the factual foundation for the motion, which is adamantly contested.

The defendant, of course, cannot review the information on the computers at the jail. Because it is contraband (allegedly), the computer evidence can only be reviewed at the United States Attorneys Office. The defendant has only reviewed evidence one time since the trial in preparation for sentencing, and this was because the government announced that it intended to introduce evidence from yet one more computer that it apparently located *during* the trial. The defendant was allowed to review the new computer evidence for approximately 2 ½ hours on Tuesday, September 4, 2007. Only the new computer was made available to the defense during that session.

The defendant has requested that the U.S. Attorney make the other computers available to the defendant next week, in preparation for sentencing that is currently scheduled for Monday, September 17. The U.S. Attorney has declined.

The defendant therefore urges the court to enter an Order directing the U.S. Attorney to promptly make the computer evidence available to the defendant and counsel, or in the alternative, withdraw its request for an

upward departure based on the number of images that are contained on the various computers.

This 5<sup>th</sup> day of September, 2007.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "DFS", with a long horizontal flourish extending to the right.

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DONALD F. SAMUEL  
Ga. State Bar #624475

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**CERTIFICATE OF SERVICE**

I hereby certify that on this the 5<sup>th</sup> day of September, 2007, I have served a true copy of the within and foregoing *Motion to Compel the Government to Make Evidence Available to the Defendant to Review Prior to Sentencing* upon Aaron Danzig and Robert McBurney, Assistant United States Attorneys, via electronic filing.



DONALD F. SAMUEL  
Ga. State Bar 624475